

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

GILLETTE HAWKINS,)	
)	
Petitioner,)	2: 13-cv-0042
)	ELECTRONICALLY FILED
v.)	
)	
SUPERINTENDENT OF SCI-)	
HUNTINGDON and THE ATTORNEY)	
GENERAL OF THE STATE OF)	
PENNSYLVANIA,)	
Respondents.		

**MEMORANDUM ORDER ADOPTING MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION (DOC. NO. 28)**

Pending before the Court is Petitioner Gillette Hawkins's Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus (Doc. No. 1), in which he challenges the judgment of sentence that was imposed upon him by the Court of Common Pleas of Allegheny County on May 8, 2006, after a jury convicted him of first degree murder, burglary, aggravated assault – serious bodily injury, criminal attempt (homicide), and criminal conspiracy. The matter was referred to United States Magistrate Judge Cynthia Reed Eddy for pretrial proceedings in accordance with Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrate Judges.

The Magistrate Judge filed a Report and Recommendation (Doc. No. 28) on June 30, 2016, recommending that the Petition for Writ of Habeas Corpus be denied and that no certificate of appealability be issued. Petitioner was granted an additional 30 day extension of time in which to file objections. On or about August 4, 2016, Petitioner filed timely objections to the Report and Recommendation (ECF No. 33). Petitioner has clearly given considerable thought to his objections; however, for the reasons that follow, after a *de novo* review, the Court finds that the objections do not undermine the recommendation of the Magistrate Judge.

Petitioner first objects to the Magistrate Judge's recommendation that Claim 1 be dismissed. The Superior Court on direct appeal found that the statements made by Petitioner's co-defendant did not amount to a violation of the Sixth Amendment's Confrontation Clause. The Magistrate Judge disagreed and found that the Superior Court's determination was an unreasonable application of clearly established federal law as set out by the United States Supreme Court. The Magistrate Judge determined, however, that Petitioner was not prejudiced by the Confrontation Clause error in light of the other evidence admitted at trial. The Court finds, as did the Magistrate Judge, that each of the government's witnesses offered pieces of evidence that, taken together, provided a solid foundation for the jury's verdict. Petitioner's first objection is, therefore, denied.

Next, Petitioner objects to the Magistrate Judge's recommendation that Claims 2, 3, and 4 be dismissed. The Magistrate Judge recommended dismissal because she concurred with the findings of the Superior Court on direct review (Claims 2 and 3) and the Superior Court on PCRA review (Claim 4). Petitioner has not established that the Magistrate Judge erred in her analysis. His mere disagreement with her decision is not enough to show that she erred in finding that the Superior Court's decisions were not contrary to, or an unreasonable application of, Supreme Court precedent.

Last, Petitioner objects to the Magistrate Judge's recommendation that Claims 5, 6, 7, and 8, all of which were procedurally defaulted, be denied. Each of these claims raised a layered ineffective assistance of counsel argument. The Magistrate Judge recommended that the claims be dismissed because reliance on *Martinez v. Ryan*, -- U.S. --, 132 S. Ct. 1309 (2012), could not overcome the procedural default. Petitioner has not demonstrated that these claims have any merit. Therefore, the Court agrees with the Magistrate Judge's recommendation of dismissal of Claims 5, 6, 7, and 8.

Accordingly, after *de novo* review of the Petition and documents in this case, together with the Report and Recommendation and the objections thereto, the following order is entered:

AND NOW, this 8th day of August, 2016:

IT IS HEREBY ORDERED that the Petition for Writ of Habeas Corpus filed by Gillette Hawkins is **DENIED** and no certificate of appealability shall issue.

IT IS FURTHER ORDERED that the Report and Recommendation (Doc. No. 28) dated June 30, 2016, is **ADOPTED** as the Opinion of the Court.

IT IS FURTHER ORDERED that the Clerk of Court mark this case **CLOSED**.

AND IT IS FURTHER ORDERED that pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, Petitioner has thirty (30) days to file a notice of appeal as provided by Rule 3 of the Federal Rules of Appellate Procedure.

SO ORDERED this 8th day of August, 2016.

s/ Arthur J. Schwab
Arthur J. Schwab
United States District Judge

cc: Gillette Hawkins
GQ 9407
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THE INMATE
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